

PATENT

Atty Docket No.: 200309083-1

App. Ser. No.: 10/679,111

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1-36 are pending, of which claims 1, 10, 19, and 28 are independent.

The drawings were objected to because of minor informalities.

Claims 1-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fransdonk (2003/0167392) in view of Yager et al. (5983236).

The above objection and rejection are respectfully traversed for at least the following reasons.

Drawings

FIGs. 2, 3, 6, and 7 were objected to because of minor informalities. Accordingly, attached herewith are replacement drawing sheets for these figures, wherein such minor informalities have been corrected. Therefore, withdrawal of the objection to the drawings is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial

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success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be

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sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fransdonk (2003/0167392) in view of Yager et al. (5983236).

Independent claims 1, 10, 19, and 28

Claims 1 and 19 both recite, *inter alia*, the transferring of a file that has a video component and an audio component, wherein the video component is first transferred, and the audio component is subsequently transferred upon the completion of the first transfer of the video component and further reception of a command to transfer the audio components. Thus, claims 1 and 19 provide a clear indication that the audio and video components of the file are transferred separately, with the audio-component transfer dependent on the video-component transfer and further conditioned on an audio-transfer command. Claims 10 and 28, as amended, include claim language to also clearly indicate that the audio and video components of the file are transferred separately, with the audio-component transfer dependent on the video-component transfer and further conditioned on an audio-transfer command.

In contrast, as cited by the Office Action (page 3, paragraph 9), Fransdonk in paragraph 0055 and throughout its entire disclosure generally discusses the routing of media content as a whole. In other words, there is no discussion in Fransdonk of the separate

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transfers of the audio and video components of such media content or file as claimed. Thus, it is not clear how the Office Action could reach the conclusion that Fransdonk's request for content is a request for an audio component of a file (see Office Action, page 3, last two lines). Accordingly, it is respectfully submitted that the Office Action failed to properly ascertain the differences between the alleged prior art, Fransdonk, and the claims at issue.

In an attempt to cure the defects in Fransdonk, the Office Action cited to Yager which allegedly shows the "transferring of a video component of a file, retrieving an audio component of said file, and transferring said audio component." (see Office Action, page 4, last three lines). Indeed, Yager discusses in column 2, lines 42+ and FIG. 2 a video clip data file that contains data: "representative of all of the components [audio and video] of the video clip it represents." Yager further discusses in column 6, lines 53+ that a video clip data file may be transferred by transferring the component data files of such a video clip data file. However, there is no further discussion of Yager on the transfer of an audio component *subsequent* to the transfer of the video component and also conditioned on a command to transfer such an audio component as claimed. The Office Action relied on Yager at column 2, lines 18-28 to show the retrieval of an audio component in a file for transfer. However, the audio signal referred to in Yager at column 2, lines 18-28 is the audio signal made by modems to establish communication with each other for transferring data files. That is, as understood in the art, such an audio signal is not an audio component of a file that is to be transferred. Accordingly, again, it is respectfully submitted that the Office Action failed to properly ascertain the differences between the alleged prior art, Yager, and the claims at issue.

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In light the aforementioned disclosures in Fransdonk and Yager, at best, the combination of Fransdonk and Yager merely provides one of ordinary skill in the art with an obvious reason to route Fransdonk's media content by routing components of such media content. Accordingly, it is respectfully submitted that the Office Action failed to establish a *prima facie* case of obviousness against independent claims 1, 10, 19, and 28 and their respective dependent claims. Withdrawal of the rejection of claims 1-36 and their allowance are therefore respectfully requested.

Dependent claims 6, 15, 24, and 33

Claims 6, 15, 24, and 33 further recite, *inter alia*, the separate encryption of video and audio components of a file with encryption keys. The Office Action cited to Fransdonk in paragraphs 0254, 0258 and FIG. 9 to show the distribution of "an encrypted sequence of session keys" in order to reject the claimed plurality of encryption keys used to encrypt the video and audio components of a file. As discussed in Fransdonk, each encrypted session key is used in Fransdonk to encrypt a session for transferring media content. However, there is no clear discussion in Fransdonk that the sessions are used to separately encrypt and transfer audio and video components of such media content as claimed.

Accordingly, it is respectfully submitted that the Office Action further failed to establish a *prima facie* case of obviousness against claims 6, 15, 24, and 33 (and their dependent claims 7, 16, 25, and 34). Again, withdrawal of the rejections of these claims and their allowance are respectfully requested.

Conclusion

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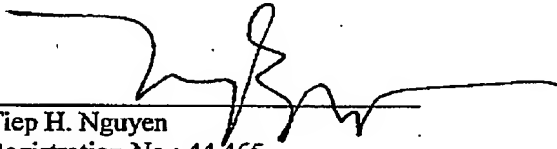
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: May 14, 2008

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